

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

BP AMOCO CHEMICAL COMPANY,)	
)	
Plaintiff/Counter-Defendant,)	
)	Case No. 05 C 5661
v.)	
)	Judge Amy J. St. Eve
FLINT HILLS RESOURCES LLC,)	
)	
Defendant/Counter-Plaintiff.)	
)	

**BP AMOCO CHEMICAL COMPANY’S MOTION TO ALTER OR AMEND
JUDGMENT PURSUANT TO FEDERAL RULE OF CIVIL PROCEDURE 59(e)**

Pursuant to Federal Rule of Civil Procedure 59(e), BP Amoco Chemical Company (“BP Amoco”) moves to alter or amend the judgment entered by the Court on December 11, 2009, dismissing BP Amoco’s claim for declaratory judgment as moot. (Dkt. 926) Specifically, BP Amoco requests that the judgment dismissing its declaratory judgment claim be vacated and that BP Amoco’s declaratory judgment claim be reinstated.

In further support of this Motion, BP Amoco states as follows:

1. On October 13, 2005, BP Amoco filed an Amended Complaint For Declaratory And Other Relief, seeking a declaration that it did not breach its written Asset Purchase and Sale Agreement with Flint Hills Resources, LLC (“Flint Hills”). (Dkt. 8) Flint Hills answered BP Amoco’s Amended Complaint and filed counterclaims for breach of contract and for fraud.

2. On November 13, 2009, following a jury trial on Flint Hills’ counterclaims, the Court entered judgment in favor of Flint Hills on Flint Hills’ counterclaim for breach of contract and in favor of BP Amoco on Flint Hills’ counterclaim for fraud.

3. On November 25, 2009, following the Court's entry of judgment on Flint Hills' counterclaims, BP Amoco filed a consolidated post-trial motion seeking judgment as a matter of law under Rule 50(b) and a new trial under Rule 59(a) on Flint Hills' breach-of-contract claim. *See* BP Amoco's Renewed Motions For Judgment As A Matter Of Law Under FRCP 50(b), Motion For New Trial Under FRCP 59, And Motion For Stay Under FRCP 62(b), and supporting memorandum of law. (Dkt. 920 and 922)

4. On December 11, 2009, the Court dismissed BP Amoco's claim for declaratory judgment as moot "in light of the jury's verdict" on Flint Hills' counterclaim for breach of contract. (Dkt. 926) Because BP Amoco believes that the judgment based on the jury's breach-of-contract verdict should be set aside and judgment entered in favor of BP Amoco or a new trial granted on Flint Hills' breach-of-contract claim, BP Amoco's declaratory judgment claim should not be considered moot and thus should be reinstated.

5. BP Amoco's challenges and objections to the jury's verdict on Flint Hills' breach-of-contract claim are set forth in its previously filed and currently pending consolidated post-trial motion and supporting memorandum. (Dkt. 920 and 922) Thus, to avoid repetition, in support of this motion BP Amoco relies on, restates and incorporates by reference herein each of the arguments set forth in its pending consolidated post-trial motion and supporting memorandum. (Dkt. 920 and 922) The consolidated motion and supporting memorandum are attached to this motion as Exhibits A (Dkt. 920) and Exhibit B (Dkt. 922).

WHEREFORE, for the reasons set forth above and also in "BP Amoco's Renewed Motions For Judgment As A Matter Of Law Under FRCP 50(b), Motion For New Trial Under FRCP 59, And Motion For Stay Under FRCP 62(b)" (attached hereto as Exhibits A and B), BP Amoco respectfully requests that the Court alter and amend the judgment dismissing BP

Amoco's claim for declaratory relief. (Dkt. 926) Specifically, BP Amoco requests that the judgment dismissing its declaratory judgment claim as moot be vacated, and that BP Amoco's declaratory judgment claim be reinstated, because BP Amoco should be granted judgment as a matter of law or a new trial on Flint Hills' counterclaim for breach of contract.

Dated: December 23, 2009

Respectfully submitted,

By: /s/ Scott W. Fowkes
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CERTIFICATE OF SERVICE

I hereby certify that December 23, 2009, I caused a true and correct copy of the foregoing to be served electronically via the CM/ECF system on the following:

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